

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|-----------------------------|---|-----------------------|
| WALTER CLAGGETT, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION FILE NO. |
| |) | |
| HMC SUITES LIMITED |) | STATE COURT OF |
| PARTNERSHIP, |) | GWINNETT COUNTY |
| MARRIOTT INTERNATIONAL, |) | CIVIL ACTION FILE NO. |
| INC. d/b/a ATLANTA MARRIOTT |) | 21-C-03484-S5 |
| SUITES |) | |
| MIDTOWN, MARRIOTT |) | |
| INTERNATIONAL |) | |
| ADMINISTRATIVE |) | |
| SERVICES, INC., MARRIOTT |) | |
| INTERNATIONAL |) | |
| CONSTRUCTION |) | |
| SERVICES, INC., MARRIOTT |) | |
| INTERNATIONAL DESIGN AND |) | |
| CONSTRUCTION SERVICES, |) | |
| INC., and |) | |
| SCHINDLER ELEVATOR |) | |
| CORPORATION, |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. SECTION 1441(b) (DIVERSITY)

COME NOW Defendants HMC SUITES LIMITED PARTNERSHIP (“HMS”), MARRIOTT INTERNATIONAL, INC. d/b/a ATLANTA MARRIOTT SUITES MIDTOWN (“Marriott International”), MARRIOTT INTERNATIONAL

ADMINISTRATIVE SERVICES, INC. (“Marriott Administrative”), MARRIOTT INTERNATIONAL CONSTRUCTION SERVICES, INC. (“Marriott Construction”), MARRIOTT INTERNATIONAL DESIGN AND CONSTRUCTION SERVICES, INC. (“Marriott Design and Construction”), and with Consent of SCHINDLER ELEVATOR CORPORATION, (“Schindler”) and within the time prescribed by law, hereby file this Notice of Removal and hereby removes Case No. 21-C-03484-S5 (the “State Court Action”) from the State Court of Gwinnett County, State of Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. § 1441(b), 28 U.S.C. § 1446 and 28 U.S.C. § 1332, and specifically shows this Court as follows:

1.

Plaintiff filed suit against Defendants in the State Court of Gwinnett County, which county is within the Atlanta Division of this Court. Said action has been designated as Civil Action File No. 21-C-03484-S5 in that Court. A copy of Plaintiff’s *Complaint*, along with the *Summonses* and written discovery served with the *Complaint*, are attached hereto as collectively as Exhibit “A.”

2.

Defendants show that said suit was instituted on May 6, 2021 in the State Court of Gwinnett County and served upon Defendants on May 11, 2021. Copies of the *Sheriff’s Entries of Service* are collectively attached hereto as Exhibit “B.”

Defendants show this Notice of Removal is filed within thirty (30) days from the date of said service of this suit on Defendants.

3.

Plaintiff Walter Claggett (“Plaintiff”) is a citizen of the State of Florida and was a citizen of the State of Florida on the date of the filing of the aforesaid civil action. (Complaint ¶ 1).

4.

Defendant HMC is a registered foreign limited liability partnership organized under the laws of the State of Delaware, with its principal place of business in Maryland. Defendant HMC is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action, though it is authorized to transact business in Georgia and has a registered agent in Gwinnett County.

5.

Defendant Marriott International is a registered foreign corporation organized under the laws of the State of Delaware, with its principal place of business in Maryland. Defendant Marriott International is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action, though it is authorized to transact business in Georgia and has a registered agent in Gwinnett County.

6.

Defendant Marriott Administrative is a registered foreign corporation organized under the laws of the State of Delaware, with its principal place of business in Maryland. Defendant Marriott Administrative is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action, though it is authorized to transact business in Georgia and has a registered agent in Gwinnett County.

7.

Defendant Marriott Construction is a registered foreign corporation organized under the laws of the State of Delaware, with its principal place of business in Maryland. Defendant Marriott Construction is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action, though it is authorized to transact business in Georgia and has a registered agent in Gwinnett County.

8.

Defendant Marriott Design and Construction is a registered foreign corporation organized under the laws of the State of Delaware, with its principal place of business in Maryland. Defendant Marriott Design and Construction is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the

date of filing of the aforesaid civil action, though it is authorized to transact business in Georgia and has a registered agent in Gwinnett County.

9.

Defendant Schindler is a registered foreign corporation organized under the laws of the State of Delaware, with its principal place of business in New Jersey. Defendant Schindler is not a citizen of the State of Georgia, and was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action, though it is authorized to transact business in Georgia and has a registered agent in Gwinnett County.

10.

Therefore, Defendants' citizenship is diverse to that of Plaintiff, and there is complete diversity of citizenship between the parties.

11.

In the State Court Proceeding, Plaintiff alleges that he was injured while attempting to enter the elevator when the door malfunctioned in the Marriott Suites Midtown located at 35 14th Street, NW, Atlanta, Georgia 30309. (Complaint ¶¶ 9, 12 and 13). Plaintiff asserts the Defendants are liable for the design, manufacturing, inspecting, repairing, and/or maintaining the elevator, (Complaint ¶33). Plaintiff's Complaint include Counts for Premises Liability; Vicarious Liability; Negligent Hiring, Training and Supervision; and Negligent Inspection, Repair and

Maintenance. (*See generally* Complaint). Plaintiff seeks damages for past and future medical expenses, past and future lost wages, as well as past and future pain suffering. (*See* Complaint Prayer for Relief).

12.

This Court has original jurisdiction under the provision of Title 28 of the United States Code § 1332 and, accordingly, this action is one which may be removed to this Court by Defendants pursuant to the provisions of Title 28 of the United States Code § 1441 and § 1446. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. There is complete diversity of citizenship between Plaintiff and Defendants. Plaintiff is a citizen of Florida. (Complaint ¶ 1). Defendants HMC, Marriott International, Marriott Administrative, Marriott Construction, and Marriott Design and Construction are citizens of Delaware and Maryland. Schindler is a citizen of Delaware and New Jersey.

13.

While no set amount of damages is sought on the face of Plaintiff's Complaint, the Complaint alleges severe injuries to Plaintiff's arm, underwent surgery for his alleged injuries, and seeks past and future medical expenses, lost wages and pain and suffering. Accordingly, Plaintiff's Complaint certainly seeks damages in excess of \$75,000 in damages. (Complaint, ¶¶ 31, 32, 33 and Prayer for Relief). To the extent Plaintiff contests the amount in controversy has not been met, Defendants will

consent to remand in exchange for a court order precluding a recovery of damages in excess of \$75,000.

14.

The registered agent for Defendant, HMC, Corporation Service Company, is located at 2 Sun Court, Suite 400, Peachtree Corners, Gwinnett County, Georgia 30092. (Complaint ¶ 2).

15.

The registered agent for Defendants, Marriott International, Marriott Administrative, Marriott Construction, Marriott Design and Construction and Schindler is CT Corporation System, 289 S. Culver Street, Gwinnett County, Georgia. (Complaint ¶¶ 3, 4, 5, 6, and 7).

16.

Defendants filed their *Answers and Affirmative Defenses* (“Answers”) and *Request for Jury Trial* (“Jury Demands”) in the State Court of Gwinnett County on June 9, 2021. Copies of the *Answers* are collectively attached hereto as Exhibit “C”.

17.

Moreover, Defendants are concurrently filing a written notice with the Clerk of the State Court of Gwinnett County, a copy of said notice being marked as “Exhibit D” and attached hereto.

18.

Defendant Schindler consents to removal of this action. (Schindler's Consent to Removal is attached as Exhibit "E"). Therefore, all Defendants consent to removal.

19.

A copy of the Notice of Removal of Action and Notice of Filing Notice of Removal are being served on Plaintiff's attorney of record in the State Court proceeding and is being filed with the Clerk of the State Court of Gwinnett County in accordance with 28 U.S.C. § 1446 (d).

20.

Plaintiff served discovery on Defendants at the time the Complaint was served. Defendants have not served responses. A copy of the *Certificate of Service* for discovery is attached collectively as Exhibit "F").

21.

By filing this Notice of Removal, Defendants do not waive, and hereby reserve all defenses to Plaintiff's Complaint, including but not limited to, failure to state a claim, lack of personal jurisdiction, improper venue and/or insufficiency of service of process.

WHEREFORE, Defendants HMC Suites Limited Partnership, Marriott International, Inc. D/B/A Atlanta Marriott Suites Midtown, Marriott International

Administrative Services, Inc., Marriott International Construction Services, Inc., Marriott International Design and Construction Services, Inc., and Schindler Elevator Corporation request this Court assume full jurisdiction over the cause herein as provided by law, and that further proceedings in the State Court of Gwinnett County, State of Georgia be stayed. Defendants further demand that the trial of this matter in federal court be heard by a jury.

Respectfully submitted this 10th day of June, 2021.

SWIFT, CURRIE, MCGHEE & HIERS, LLP

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document was prepared in Times New Roman font, 14 point, and complies with Local Rule 5.1(C) of the Northern District of Georgia.

This 10th day of June, 2021.

SWIFT, CURRIE, McGHEE & HIERS, LLP

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Notice of Removal of Action Under 28 U.S.C. Section 1441(B) (Diversity)* to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and upon all parties to this matter as follows:

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This 10th day of June, 2021.

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